STATE OF MICHIGAN

COURT OF APPEALS

PACIFIC PROPERTIES, LLC, Petitioner-Appellant,	UNPUBLISHED March 1, 2005
v	No. 249945 Michigan Tax Tribunal
TOWNSHIP OF SHELBY, Respondent-Appellee.	LC No. 00-293123

Before: Markey, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

This case arises out of the improper assessment of taxes for Pacific Properties (Pacific's) real property situated in the Charter Township of Shelby, Macomb County. Pacific appeals by leave granted the Michigan Tax Tribunal (MTT or tribunal) dismissal for lack of jurisdiction a petition to amend the property's assessed and taxable values for tax years 1999 and 2000. We reverse and remand for entry of an order granting the relief requested.

I. Summary of Facts and Proceedings

The parties agree on the relevant facts. Pacific owns a parcel of real property (23-07-13-376-031) in Shelby Township. At its December 2000 meeting, the township's board of review erroneously revised the assessed and taxable value of the property for tax years 1999 and 2000 to include the value of a building that was not located on the property. Pacific was not notified of the change until January 2001 when it received its revised 2000 tax bill. Pacific asserts that it did not learn how and why this problem arose until receiving a letter from the township's attorney dated April 24, 2003, which states:

> Sometime after the March Board of Review, an employee of Shelby Township's Assessor Department came to the Assistant Assessor and indicated that property had been omitted for tax parcel 23-07-13-376-031, because there had been construction of a building on the property. The adding of the value of this building to the assessment was placed upon the December, 2000, Board of Review meeting. The Shelby Township's Assessor's office employee had the wrong parcel number on the material provided to the Assistant Assessor. The new construction was on a different parcel number.

When Pacific brought the error to the attention of the township assessor's office, the assessor contacted the State Tax Commission (STC) and was advised that Pacific must seek its relief from the tribunal. Consequently, on July 1, 2002, Assessor William D. Griffin wrote to the tribunal requesting that the assessed and taxable values for the subject parcel be amended for tax years 1999 and 2000 pursuant to MCL 211.53a.[1] Griffin stated in his letter that "[t]he assessed and taxable values were revised in error as a part of the 2000 December Board of Review without properly notifying the taxpayer," and that "[t]he taxpayer was not aware of the value change until January 2001 upon receiving the revised 2000 tax bill." Griffin requested that the assessed value of the parcel for 1999 and 2000 be changed from $497,840 to $34,500, and the taxable value changed from $475,650 for each year to $12,310 (1999) and $12,540 (2000). The tribunal treated Griffin's letter as a "stipulation," docketed the matter as a petition by Pacific, and notified Griffin the filing was defective without a motion fee and address of the "petitioner."

On July 25, 2002, Pacific filed a motion with the tribunal to amend the assessed and taxable value of its property pursuant to MCL 211.53a in accordance with Griffin's letter. On August 2, 2002, the tribunal hearing officer entered an "Order Denying Parties' Stipulation for Entry of Consent Judgment," finding that the tribunal lacked jurisdiction under MCL 211.53a. The hearing officer reasoned that because Griffin stated in his letter that the "building was erroneously added to the assessment roll when in fact it did not exist," "it does not appear that the assessments for tax year(s) 1999 and 2000 were the result of a clerical error or mutual mistake of fact." The hearing officer further determined that the tribunal lacked jurisdiction over the subject assessments because Pacific had failed to timely appeal the changed assessments in accordance with the time limits required by MCL 211.27b and 205.735.

On October 9, 2002, the parties filed a joint motion for reconsideration. The parties argued that MCL 211.27b is not applicable because that section is limited to issues involving transfers of ownership and correcting arithmetic errors. The parties also argued that MCL 205.735 is not applicable because, although that section provides time limits for protesting an assessment, it does not delineate the MTT's subject-matter jurisdiction. The parties further contended that although MCL 205.735 might bar recovery if it were raised as an affirmative defense, the township conceded that Pacific was entitled to have the assessed and taxable value for its property for 1999 and 2000 corrected.

On December 18, 2002, the MTT denied the parties' motion for reconsideration. The hearing officer first determined that the motion was untimely[2] and that the township had no authority to waive the statutory deadline. The hearing officer then found that although the

---

[1] MCL 211.53a provides: "Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest."

[2] MCL 205.752(2) provides, in part, that the "tribunal may order a rehearing upon written motion made by a party within 20 days after the entry of the decision or order."

parties were correct that MCL 211.27b was inapplicable to this case, the error was inconsequential because MCL 205.735 requires compliance with the time limits to invoke the tribunal's jurisdiction, citing *Electronic Data Systems Corp v Twp of Flint*, 253 Mich App 538; 656 NW2d 215 (2002). The hearing officer also found no palpable error in his earlier determination that the tribunal did not have jurisdiction under MCL 211.53a because the erroneous tax assessments did not result from a clerical error or a mutual mistake of fact. Instead, the board of review failed "'to consider all relevant data,'" which was not a clerical error, citing *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104; 548 NW2d 668 (1996). Further, although MCL 211.53a provides an exception to the jurisdictional time limits of § 735, here, the township assessor's office made a unilateral mistake; there was no mutual mistake of fact required by § 53a.

On July 25, 2003, Pacific filed a delayed application for leave to appeal with this Court, which was granted. This Court directed the parties to address whether jurisdiction over this issue lies with the MTT or with, for example, the STC. During these proceedings, the subject property was scheduled for a tax sale because the erroneous assessment had not been paid. The parties stipulated to stay the tax sale pending a final determination of the validity of the assessment.

II. Analysis

In the absence of fraud our review of property tax valuations or allocations on appeal from the MTT is limited by Const 1963, art 6, § 28 to "error[s] of law or the adoption of wrong principles." *EDS, supra* at 541; *MCI Telecommunications Corp v Dep't of Treasury*, 136 Mich App 28, 30; 355 NW2d 627 (1984). We must generally accept factual findings of the tribunal but an error of law occurs when decisions of the tribunal are not supported by competent, material, and substantial evidence on the whole record. *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998); *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979). Finally, we review de novo the questions of law presented here: whether the tribunal has jurisdiction, *Jackson Community College v Dep't of Treasury*, 241 Mich App 673, 678; 621 NW2d 707 (2000), and the interpretation and application of pertinent statutes, *WA Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 336; 686 NW2d 9 (2004).

The primary goal of statutory construction is to ascertain and give effect to the intent of the Legislature. *Wikman v Novi*, 413 Mich 617, 631; 322 NW2d 103 (1982); *Ford Motor Co v Bruce Twp*, 264 Mich App 1, 7; 689 NW2d 764 (2004). We look first to the words used in the statute because they are the most reliable evidence of the Legislature's intent. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004); *Wikman, supra* at 632. We must construe an entire act as a whole and interpret particular words in one part giving due consideration to every other part so as to produce a meaning that is, if possible, an harmonious and consistent whole. *Great Lakes, supra* at 431. Thus, we must give effect to every word, phrase, or clause of a statute by considering its plain meaning as well as "'its placement and purpose in the statutory scheme.'" *Shinholster, supra* at 549, quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Of course, when the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Id*.;

Ford Motor Co, supra at 7. We must enforce clear and unambiguous statutes as written. *Shinholster, supra* at 549; *Jackson Community College, supra* at 679.

MCL 205.731 establishes the jurisdiction of the MTT by providing:

> The tribunal's exclusive and original jurisdiction shall be:
>
> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws.

Whether this case is considered a "proceeding for direct review of a . . . determination . . . relating to assessment, [or] valuation . . . under the property tax laws," or as a "proceeding for . . . redetermination of a tax under the property tax laws," the plain and unambiguous words of § 731 provide that the tribunal has subject-matter jurisdiction over the issue presented in this case. See *Highland-Howell Development Co, LLC v Marion Twp*, 469 Mich 673, 674, 676; 677 NW2d 810 (2004); *WPW Acquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656 NW2d 881 (2002). But a petitioner must act timely to invoke the jurisdiction of the tribunal. For "an assessment dispute . . . the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (2)." MCL 205.735(1). Under subsection (2), "[t]he jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved", or "within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review." MCL 205.735(2).

Pacific's reliance on *Parkview Memorial Ass'n v Livonia*, 183 Mich App 116; 454 NW2d 169 (1990), for the proposition that the time limits in MCL 205.735(2) are not jurisdictional, but rather procedural requirements codifying the doctrine of exhaustion of remedies, is misplaced. *Parkview* was decided before November 1990, and therefore it is not binding precedent. MCR 7.215(J)(1). Rather, both this Court and our Supreme Court have held that MCL 205.735(2) is not merely a notice statute; it is a jurisdictional statute governing when and how a petitioner may invoke the MTT's jurisdiction. *Szymanski v City of Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984); *Foote Mem Hosp, supra* at 338, citing *EDS, supra* at 542-543. The hearing officer correctly determined that the parties could not waive defects in the tribunal's jurisdiction and that the tribunal lacks the equitable power to ignore the language of the statute. *Id.* at 544, 547-548.

Here, Pacific could not protest the valuations at issue before the board of review because it received no notice of the board's intent to amend the valuation at its December 2000 meeting. In addition, because the board of review did not increase the assessed value of Pacific's property for the tax years of 1999 and 2000 until December 2000, Pacific could not have filed a petition with the tribunal before June 30 of 1999 or 2000 as required under MCL 205.735(2). Pacific also failed to file a proceeding with the tribunal "within 30 days after the final decision, ruling,

determination, or order that the petitioner seeks to review." *Id*. If one were to look only to the jurisdictional time requirements of § 735, it would appear that the hearing officer correctly concluded the tribunal was without jurisdiction. *EDS, supra* at 542-543.

But there are several reasons why the literal requirements of § 735 do not apply to this case. First, by the statute's own words, subsections (1) and (2) of § 735 apply to an "assessment dispute." The statute does not define "dispute." When the Legislature does not define a word, we may consult a dictionary for the word's ordinary meaning. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 124 (2004). "The *Random House Webster's College Dictionary* (1992), p 388, defines "dispute" as "to engage in an argument or debate," "to argue vehemently; quarrel," "to argue against; call in question," "to quarrel or fight about; contest," "to strive against; oppose," "a debate, controversy, or difference of opinion." Applying these definitions to this case, there is simply no "dispute" between Pacific and Shelby Township regarding the correct assessed valuation for Pacific's property for the tax years 1999 and 2000. The parties agree and have always agreed that the property's true cash value for those years should be $34,500, not the amended assessed value of $497,840 the board of review set at its December 2000 meeting. The Michigan Constitution requires that property taxes be uniformly assessed at not more than 50 percent of a property's true cash value. Const 1963, art 9, § 3; see, also, MCL 205.737(2).

Moreover, our Supreme Court has held that the jurisdictional time limits of MCL 205.735[3] will apply only when "'a specific provision providing a longer period of limitation does not exist.'" *Szymanski, supra* at 304, quoting *Wikman, supra* at 653. In that regard, the parties point to MCL 211.53a as providing a basis for the MTT's jurisdiction having to correct the undisputed assessment error that occurred in this case. We agree with the hearing officer that because the mistake here was not mutual, i.e., it was not a mistake made by both the taxpayer and the assessing officer, *Ford Motor Co, supra* at 9, MCL 211.53a does not apply. But we do conclude that the tribunal erred as a matter of law by finding that the mistaken valuation here was not the result of a clerical error within the meaning of § 53a.

In *Int'l Place, supra* at 108-109, this Court discussed the meaning of "clerical error" as contemplated by MCL 211.53b. After noting the Legislature had not defined "clerical error" so resort to dictionary definitions was appropriate, the Court opined:

> Black's Law Dictionary (6th ed), p 252, defines "clerical error" as generally "a mistake in writing or copying." See also *Webster's Third New International Dictionary, Unabridged Edition* (1966), p 421; *Webster's New Twentieth Century Dictionary, Unabridged Edition* (1983), p 338. Furthermore, reading the statute in context, the reference to a clerical error or mutual mistake is directly referenced to use of the correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes. MCL 211.53b; MSA 7.97(2).

---

[3] Our Supreme also hinted the limitations § 735 may not apply when notice to the taxpayer is inadequate. *Szymanski, supra* at 305, n 5.

> Thus, the statute itself refers to errors of a typographical, transpositional, or mathematical nature. [*Int'l Place, supra* at 109.]

The parties have stipulated that the error in this case occurred when an employee of the assessor's office wrote down the wrong property parcel number for a newly constructed building in the township. The parcel number the employee wrote down and gave to the assistant assessor was Pacific's property at issue in this case. Consequently, the error here occurred because of "a mistake in writing or copying" and was "typographical," or "transpositional" in nature. In other words, the assessor's office made a "clerical error" within the meaning of the statute resulting in a valuation of Pacific's property more than 14 times its true cash value.

The next question is whether the MTT has jurisdiction under § 53a to grant relief from this obvious and undisputed error. As we have already noted, the time limitations of § 735 do not apply when another, more specific limitations period does. *Szymanski*, *supra* at 304; *Wikman, supra* at 653. We find the specific limitation period provided in § 53a applies to this case. Because § 53a permits a taxpayer to recover excess taxes paid in error "within 3 years from the date of payment" and because the erroneous assessed taxes have not yet been paid, the three-year limitations period has not yet expired. So, the MTT has jurisdiction to grant Pacific relief.

We reverse and remand to the MTT for entry on an order granting the relief to which the parties have stipulated. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ William B.Murphy
/s/ Peter D. O'Connell